

**REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STIPULATION AND PROPOSED ORDER



In the Matter of the Petition of

CITY OF PISMO BEACH

For Review of Order No. R3-2004-008

Issued by the
California Regional Water Quality Control Board,
Central Coast Region

SWRCB/OCC FILE A-1642

INTRODUCTION

On October 2, 2003, the Regional Water Quality Control Board, Central Coast Region (Regional Board) issued Administrative Civil Liability Complaint No. R3-2003-050 (Complaint) to the City of Pismo Beach (City). The Complaint alleged violations of Waste Discharge Requirements Order No. 99-31 (NPDES CA0048151) (Permit) and proposed to assess mandatory minimum penalties in the amount of \$750,000. After review of the complaint, the City contested five violations that were listed redundantly or incorrectly. Staff confirmed that those violations were in fact incorrectly included, and removed them from the final MMP Order No. R3-2004-008 that went before the Board in a hearing on February 6, 2004. With that change, the penalty amount was reduced by \$15,000 to \$735,000. Many of the violations alleged in the Complaint were for exceeding various effluent limits expressed in the Permit as "weekly (7-day) average." The City had reported these as violations of "rolling" 7-day periods.

All of the violations cited in the Complaint were alleged as mandatory minimum penalties pursuant to California Water Code¹ sections 13385(h) and (i), and not as discretionary penalties under section 13385(c).

Prior to and at the hearing, the City proposed various supplemental environmental projects (SEPs) pursuant to Section 13385(I). None of the proposed SEPs was acceptable to the Regional Board. Accordingly, the Regional Board continued the hearing for further consideration of proposed SEPs, but closed the hearing for all other purposes.

The Regional Board resumed the hearing on May 13, 2004 and adopted Order No. R3-2004-008, imposing mandatory minimum penalties in the amount of \$735,000 and approving various SEPs.

The Permit does not specify that violations of weekly averages shall be calculated based on "rolling" weeks. In applying this language in the past and in other similar permits, Regional Board staff has not treated the weekly periods as rolling weeks. Rather, the Regional Board has calculated mandatory minimum penalties for violations of weekly averages as one violation per week, based on sampling data points collected during that week.

Beginning in the March 2001 Monitoring Report, the City began calculating and reporting compliance with weekly (7-day) average effluent limits in the following manner. Each day, the preceding seven days' data points were averaged to create a daily calculation of running 7-day average. For days without corresponding sample data, the most recent preceding data point was carried forth in calculating a new daily entry for a running 7-day average for a given constituent. Each day in which the running 7-day average exceeded the corresponding effluent

All section references are to the California Water Code.

limit reported as violation. Compliance with weekly average effluent limits should be calculated as single average of actual sample data from the corresponding 7-day week.

Regional Board staff drafted the Complaint based on the City's violation reports. Therefore, the Complaint alleged multiple violations during a single week that should have resulted in a single violation. In addition, sample results in excess of limits carried over from the prior week may have caused violations where the weekly average for the week in question actually met the effluent limit.

After the hearing, the City determined that the weekly-average effluent limitation violations should not have been based on rolling periods. The recalculation would significantly reduce the sum of mandatory minimum penalties incurred by the City. Regional Board staff has not completed the recalculation yet and expresses an opinion on what the recalculated dollar amount should be.

On June 2, 2004, the City filed a petition with the State Water Resources Control Board ("State Board") for review of the Complaint on the grounds that the complaint overstates the number of violations and the penalty amount. In the petition, the City requested that the State Board remand the matter to the Regional Board to determine and recalculate the penalty. The State Board has assigned the Petition file No. A-642, but otherwise has taken no action with regard to the petition.

Regional Board staff agrees with the City's position, stated in a June 2, 2004 letter from the Executive Officer of the Regional Board to the City. However, an administrative civil liability order is final upon adoption and cannot be reconsidered by the Regional Board. (State Water Resources Control Board Water Quality Enforcement Policy §IX.B.)

STIPULATION


In light of the foregoing, the Regional Board's Executive Officer and the City of Pismo Beach hereby request the State Water Resources Control Board vacate Order No. R3-2004-008 and remand the matter to the Regional Board for further proceedings regarding the appropriate amount of mandatory minimum penalties, any supplemental environmental projects that the City shall fund pursuant to Section 13385(I), and other appropriate matters. The Executive Officer and the City hereby stipulate to an order vacating and remanding Order No. R3-2004-008. The Regional Board, Executive Officer and City reserve their right to assert and allege all available remedies, claims and defenses in the remanded proceeding and in any future proceedings. To effect this, the parties agree that the Executive Officer retains discretion to amend or reissue the Complaint. The City further agrees to withdraw Petition No. A-1642 upon request by the State Board. A proposed Stipulated Order is attached.



City of Pismo Beach

16 September, 2004

Date



Roger W. Briggs
Executive Officer
Central Coast Region
Regional Water Quality Control Board

9-28-04

Date

STIPULATED ORDER

IT IS HEREBY ORDERED that

1. Administrative Civil Liability Order No. R3-2004-008 is hereby vacated and remanded to the Regional Board for further consideration.
2. This Stipulated Order does not limit or affect the right and ability of the Regional Board, Executive Officer, or City to assert and allege all available remedies, claims and defenses, or the Executive Officer's right and ability to amend or reissue the Complaint, in the remanded proceeding and in any future proceedings.

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